

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRTIETH REGION

Milwaukee, Wisconsin

**DELZER LITHOGRAPHIC COMPANY**

**Employer**

**and**

**Case 30-UC-399**

**GRAPHIC COMMUNICATIONS  
INTERNATIONAL UNION-LOCAL 577M**

**Petitioner**

**DECISION AND ORDER DENYING UNIT CLARIFICATION**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act (Act), as amended, a hearing was held before a hearing officer of the National Labor Relations Board (Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
3. The Petitioner (Union) is a labor organization within the meaning of the Act.

**Issue and Parties' Positions**

The Union proposes to clarify the unit by including the position of NexPress operator. The Employer opposes clarification, primarily contending the recognition clause does not include the work performed by the NexPress operator.

## **Background**

The Employer is a full-service commercial printer that operates a printing facility at its Waukesha, Wisconsin location. For at least 50 years, the Union has represented certain employees of the Employer, and has been a party to a series of collective bargaining agreements, the most recent of which expired on July 31, 2000. First appearing in the parties' 1966-1969 collective bargaining agreement, the recognition language is defined in terms of the Union's jurisdiction:

All employees performing any of the following lithographic production work, shall without limitation, be covered by the terms of this agreement: All work, processes, and operations directly related to lithography or offset (including wet or dry) for purposes of printing, or otherwise reproducing images of all kinds, including any technological or other change, or evolution from any work, process, or operation now or hereinafter utilized in the methods described above.

Negotiations for a successor to the expired 2000 agreement are ongoing. Earlier this year, when the Union learned the Employer acquired the NexPress, it requested bargaining, but the Employer declined. At the Union's request, the Employer sent a July 1 letter detailing its reasons for refusing to bargain over the NexPress work.

## **The Press Employees**

The Union represents the employees who operate the Employer's 240, 640, 640 CD, and M-110 presses. The 240, manufactured by Heidelberg, has two cylinders and can print on a 28 inch long

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<sup>1</sup>Petitioner and the Employer filed timely briefs, which have been duly considered.

by 40 inch wide sheet of paper. A six color press, the 640 can also print on a 40 inch sheet of paper. Heavier stock, as well as ordinary paper, are printed on the 640 CD. Unlike the other presses, the Harris M-110 is not sheet fed, but instead prints onto a roll of paper called a web, which does not exceed 26 inches in width. A couple of presses, formerly used by the Employer, remain in the plant but are no longer operated.

Lithographic presses employ an indirect method of printing on the stock, whether sheets or a web. A plate attached to a rotating drum transfers the image, via an ink and water solution, to a blanket (a cylinder with a rubber cover), which presses against the paper, and transfers the inked image to the paper. Water and alcohol, or an alcohol substitute, etch the plate. Those portions of the image on the plate that do not contain the water and alcohol allow the ink, because it is oil based, to adhere, creating the image that transfers to the blanket. This process is known as a wet offset process. A dry offset process, also available commercially, utilizes a plate of a different material and silicone to repel the ink in the non-image areas. The Employer uses only a wet offset process.

Five MAC operators, who the parties agree are part of the bargaining unit although they are not listed in the collective bargaining agreement, perform work formerly done by strippers. That is, they arrange the images on the computer (formerly, films were manually arranged) in the proper print order, and send it to the CTP unit, computer to plate unit. Two plate makers operate the CTP unit, which burns the image onto the plate with a laser. After further processing, the completed plate exits the CTP unit and is ready to be hung on the press.

Each press cylinder contains a separate color. On a six cylinder press, four cylinders transfer either cyan (blue), magenta (red), yellow, or black to the blankets. One color is imposed on top of the

other, creating the potential for millions of colors. The register, or alignment, of the colors must be perfect to create the desired image. The remaining cylinders are used for spot colors in case there is a special color or varnish required.

In the case of the M-110, after printing, the web runs through ovens that flash off the chemicals, followed by chill rollers that set the ink. The web is then cut into sheets or folded. In contrast, sheets coming off the sheet fed presses are wet, even though they pass through dryers in the sheet fittings, and must be dried through oxidation.

A four year apprenticeship program, or equivalent experience, is required to become a journeyman pressman. Apprentices must complete 360 hours of classroom instruction, together with on-the-job training.

The 240 press operates with a first pressman, who is in-charge of the press, and a feeder operator, whose responsibility is to load sheets that are fed into the press. The first pressman's position is usually occupied by a journeyman pressman; the feeder operator's is typically not, although there are times a journeyman pressman feeds the press. A first pressman and a second pressman (usually a journeyman) operate the 640 press and the 640 CD. The M-110 has a crew of three: first pressman, second pressman, and a roll tender, who hangs plates on the press and stacks loads coming off the press.

A job ticket is prepared for each run, explaining what needs to be done in terms of color, coatings, and folding. All the information needed to complete the job is listed on the job ticket, right through the final processing. Before the run begins, a pressman compares a sample sheet against the proof sheet approved by the customer. Some jobs have been run previously, in which case, saved

sheets are pulled from a file and serve as the color models. During make ready, the pressmen insure that the pages are in the proper order and that the colors adhere up to the cutting locations, to avoid white spaces. In the sheet fed operation, the printing occurs on one side at a time; double-sided printing requires the sheets to be flipped over and run through again. With a web operation, printing occurs simultaneously on both sides of the paper.

During the run, the pressmen constantly adjust the controls to maintain the colors. Sheets are pulled after every 1,000 sheets or 15 minutes, and inspected to insure color consistency and register. Web inspections are performed every 15 or 20 minutes. Occasionally, the run has to be interrupted to clean the blanket cylinders and to remove any format. After the sheets are printed and have dried, most are sent to the bindery for further processing, but some are shipped as is. Defective sheets are noted by the first pressman, so they can be sorted after the job is finished. Total press run numbers are entered on the job ticket, as well as any information that would be helpful should the job be run in the future.

## **The NexPress Operator**

The NexPress, located in the fulfillment area<sup>2</sup>, was purchased in March of this year.

Together with the Image Runner<sup>3</sup>, a machine used to produce black and white images, the NexPress, capable of producing color images and imparting variable data, serves the printing needs of the fulfillment area. Before the arrival of the NexPress, the Employer took work to Kinko's or GE

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<sup>2</sup>The fulfillment department provides a range of customer services, which include responding to information requests, sending out items with customer logos, preparing promotional kits, and assembling 3-ring binders. Although located in a separate area of the facility, the fulfillment department is accessible to all employees.

<sup>3</sup>The Union has made no claim to jurisdiction over the Image Runner, a copier the Employer has owned for about three years.

Medical whenever limited quantities of color images were required. The purpose of the NexPress is to allow for short runs, with variable data, and to have a quick turn around time, at a low cost. The Image Runner and NexPress provide the flexibility to print on demand, and to avoid maintaining inventories.

The NexPress performs digital color printing. In the only similarity to lithographic printing, the NexPress uses a technology where the image is indirectly transferred to the paper, via an image transfer cylinder. Instead of ink, the NexPress uses toner, which is fused onto the paper. The Employer's expert witness, Professor Frank Romano testified that the NexPress is virtually a giant copying machine, employing technology different from lithographic presses. He also testified that the electrostatic technique of the NexPress is not an evolution of lithography. Professor Romano noted that it would not be cost effective to print more than about 2,000 pieces of any particular item on the NexPress. At approximately that point, the economies of scale favored lithographic press printing. As far as quality is concerned, Professor Romano testified that the best digital printers achieve about 800 dots per inch, whereas printing presses achieve 3,600 dots per inch resolutions.

Vicki Kempke is the sole NexPress operator. Based on her experience with the Image Runner, the Employer thought she would be a logical choice to operate the NexPress. Kempke spent a week in Kennesaw, Georgia, at Heidelberg's U.S. Plant, receiving training on the NexPress. The training focused on daily maintenance tasks and the essentials of operating the machine. Kempke has not had press training or formal schooling in printing operations. Two others have received training for the NexPress. Mike Delzer, who is responsible for the fulfillment area, underwent the same training as Kempke, in Georgia. Greg Royal, the database administrator, received one week of variable data training by Heidelberg.

When Kempke arrives in the morning, she first turns on the Image Runner and then the NexPress, which takes about 10 minutes to boot up, like a computer. Once the NexPress has warmed up, Kempke follows the detailed instructions on the screen required to perform daily maintenance, which takes about 20 minutes. More than one-half of the NexPress' components are operator replaceable. She is responsible for insuring that the three paper trays contain sufficient quantities of the properly sized paper, and she adds toner when necessary. After loading the PDF file(s) (containing all the job information required) into the NexPress, Kempke pushes the print button and the job starts. She is not required to stand watch over the NexPress while it prints, to monitor the print quality. In fact, she often operates both the Image Runner and NexPress while, simultaneously, performing fulfillment department duties. On average, Kempke spends 1 to 2 hours a day operating the NexPress, which is actually the time the machine is running, and includes the time she stands next to the machine or performs other duties. The NexPress can print 4200 clicks an hour on an 8 1/2 by 11 inch sheet of paper. A click is printing on one side of a sheet of paper. The Image Runner is capable of 110 clicks a minute.

Customers provide the PDF files to the Employer. Some of the files are first sent to prepress, but many are sent directly to the fulfillment department. The Employer expects that eventually all PDF files will be sent directly to the fulfillment department. An employer web site has been established where customers can electronically send PDF files for processing.

## **Analysis and Decision**

The Board, in *The Sun*, 329 NLRB 854, 859 (1999), stated:

Accordingly, we shall apply the following standard in unit clarification proceedings involving bargaining units defined by the work performed: If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate. [Footnote omitted.]

In this case, the jurisdictional language begins with the following:

All employees performing any of the following lithographic production work . . .

The introductory language is followed by a detailed description of the types of work covered under the Union's jurisdiction. Included in the detailed description are the following terms:

. . . lithography or offset (including wet or dry) . . .

The Union, at the hearing and in its brief, argues that because the NexPress uses a form of “offset” printing, it comes within the jurisdictional language.<sup>4</sup> The parties' use of “or” suggests that offset is different from lithography, but when considered with the words “wet or dry,” the reference appears to be lithography, particularly in light of the prefatory language's description of “lithographic production work.”

Professor Romano's testimony establishes that the NexPress uses a different technology from lithography to impart a colored image to the paper. Additionally, he testified that the NexPress'

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<sup>4</sup>The Union correctly notes that Professor Romano testified that because the “dry” lithography process is of 1980's vintage, the language in the collective bargaining agreement is comparatively new. In this case, he was mistaken, as the Union introduced the relevant portion of the collective bargaining agreement from the mid-1960's where this language first appeared.



electrostatic process is not derived from lithographic printing methods. Basically, the NexPress is a large copying machine. At the hearing, both parties noted descriptions supporting their positions in literature describing the NexPress. I do not consider the literature as reliable as the expert, technical descriptions of the two processes.

One of the purposes of the NexPress is to permit variable data entry on paper. For example, each ticket to a sporting event must be printed with a different description of the seat location. Variable data cannot be entered - printed - on the lithographic presses. Variable data can be printed on the Image Runner and the NexPress. The skill level, a four-year apprenticeship, required to operate the lithographic presses far exceeds the one-week of training necessary to operate the NexPress. The Union offered anecdotal evidence that the NexPress has taken away bargaining unit work, however, the Employer testified that was not the case. I find the NexPress operator does not perform lithographic production work within the unit as defined by the parties themselves.

Additionally, traditional community of interest factors, not solely within the Employer's control, favor exclusion from the unit. For example, the training and skill level of the NexPress operator falls far short of that of the pressmen. The NexPress operator trains for one week; the pressmen train in their craft for 4 years. No bargaining unit pressman works in the fulfillment department.

Also, under the Board's test, it is presumed that employees will be added to the unit

. . . unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. 329 NLRB at 859 (footnote omitted).

Uncontradicted record testimony establishes that the NexPress operator spends 1 to 2 hours out of an 8-hour day operating the NexPress. Even those 1 to 2 hours include time performing other tasks in the fulfillment department, while the NexPress is running, much as a secretary would set up a copier to make multiple copies while he or she walked away to perform other tasks. Unlike the lithographic presses, the NexPress does not require constant monitoring and adjustment to insure quality printing. Although the Employer anticipates more work will become available for the NexPress, presently, the operation of the NexPress is an insignificant part of Kempke's work.

Based on the analysis above, it would be inappropriate to include the NexPress operator in the bargaining unit as sought in the petition.

## **Order**

It is ordered that the petition for unit clarification is dismissed.<sup>5</sup>

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 14, 2003.

Signed at Milwaukee, Milwaukee, Wisconsin July 31, 2003.

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<sup>5</sup>This Decision and Order does not constitute a recertification of the Union.

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